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CHAPTER 6

PART I - ACQUISITION

I. OVERVIEW

This chapter will provide guidance to local HOME grantees for dealing with the complex issue of acquiring real property. Two different acquisition procedures are defined and described: **voluntary acquisition** and **non-voluntary acquisition**. The exhibits provide sample letters, notices, and forms to assist the grantee in complying with acquisition requirements.

II. GRANTEE RESPONSIBILITIES

For each acquisition activity, the grantee must determine if the acquisition is voluntary or non-voluntary to determine how the transaction is governed by the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, including 1987 amendments. This Act and amendments to the Act deal specifically with real property acquisition. It is important to note that not all real property acquisitions are subject to the stricter provisions of the *Uniform Relocation Act*. Regardless of whether the acquisition is voluntary or non-voluntary, if it results in displacement, persons or businesses displaced by the acquisition are still entitled to relocation assistance under the Act.

Contact your HOME Program Officer for guidance on the federal requirements that apply if you are planning HOME-assisted projects that may involve either temporary relocation or permanent displacement of local residents or businesses as a result of acquisition activities. Part II of this Chapter, RELOCATION, outlines the requirements that must be met with regard to the displacement or relocation of households or businesses.

A. VOLUNTARY ACQUISITIONS

For a public agency (i.e., an entity with the power of eminent domain), acquisition can be considered voluntary, and not subject to the stricter requirements of the *Uniform Relocation Act*, if ALL of the following conditions are present:

- The public agency determines and informs the owner in writing that it will not use its power of eminent domain to acquire the property if negotiations fail to result in an amicable agreement; and
- No specific site or property is designated for acquisition, although the grantee may have a general geographic area in mind; and
- The property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area will eventually be acquired; and

- The grantee informs the owner of its estimate of the fair market value of the property. An appraisal is not required; however, a person familiar with real estate values must prepare the estimate, and the grantee's files must include an explanation of the basis for the estimate. An appraisal must be done if the property owner requests it.

For a non-public entity (no powers of eminent domain), such as a CHDO or a person(s) receiving federal financial assistance, the acquisition can also be considered voluntary, and not subject to the stricter requirements of the *Uniform Relocation Act*, if BOTH of the following conditions are present:

- The entity determines and informs the owner in writing that it does not have the power of eminent domain, and therefore will not attempt to acquire the property if negotiations fail to result in an amicable agreement; and
- The buyer informs the property owner of its estimate of the fair market value of the property. **This notice must be in writing and provided before the seller enters into the contract for sale.** An appraisal is not required, but a person familiar with real estate values must prepare the estimate, and the grantee's files must include an explanation of the basis for the estimate. An appraisal must be completed if requested by the property owner.

The required notices must be in writing and provided before the seller enters into the contract for sale. If there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this information is provided.

If the grantee determines that an acquisition will be voluntary in nature, the grantee should adhere to the procedures outlined below:

1. If a local government grantee receives a voluntary offer of sale for an acceptable property or makes an offer, the offer should be documented in a manner similar to **Exhibit 6-Ai, Voluntary Agreement between Grantee and Individual Seller**. Properties may be voluntarily donated as well. In such cases **Exhibit 6A-ii, Waiver of Procedures and Rights under URA and Real Property Acquisition Policies Act of 1970 for Donation of Real Property**, can be used to reflect a donation rather than a sale.
2. If an entity not having the power of eminent domain offers to sell or buy real property it should be documented in a manner similar to **Exhibit 6A-iii**.
3. If real property is being acquired through voluntary acquisition, it must be appraised to assure fair market value is paid for the acquisition. The name of the appraiser, date of appraisal, appraised value of the property, and a copy of the appraisal must be retained in the grantee's HOME Project File. Grantees may use **Exhibit 6A-iv** in lieu of an appraisal to ensure the owner is informed of the fair market value of the

property before the seller enters into the contract for sale. An appraisal is not required for a voluntary acquisition in the following situations:

- a) If the landowner agrees to donate the property;
 - b) If the grantee determines that an appraisal is unnecessary because the determination of valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based upon a review of available data¹ prepared by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the grantee's appropriate HOME Project file); or
 - c) If the property owner agrees to waive the appraisal, and such approval is obtained in writing.
4. In cases involving voluntary acquisitions, property owners are not eligible to receive relocation assistance payments. However, tenants of acquired property are eligible for relocation assistance. The federal requirements for relocation of households or businesses are extensive and extremely complex. **Displacement of households or businesses should be avoided whenever possible.** Refer to **Part II, RELOCATION**, and contact your assigned HOME Program Officer for further guidance on how to proceed for potential relocation situations.
 5. Complete the *Voluntary Acquisition File Checklist (Exhibit 6-B)* to document acquisition of property on a voluntary basis.
 6. Retain a copy of the contract for sale, purchase price of the property, settlement costs, donation agreement (if applicable), recorded deed of property to the grantee, and proof of payment in the applicable HOME Project File.

B. NON-VOLUNTARY ACQUISITIONS

If the acquisition is not voluntary in nature, and therefore subject to the stricter rules and regulations of the *Uniform Relocation Act*, the following procedures should be followed:

1. Obtain a Copy of HUD Handbook 1378, *Tenant Assistance Relocation and Real Property Acquisition*, September 1990 (with changes 1-4). Grantees who have activities involving non-voluntary acquisition must obtain a copy of HUD Handbook 1378 from their assigned HOME Program Officer before proceeding with the acquisition activities. This handbook provides the grantee with guidelines for acquisition under the *Uniform Relocation Act*, and it should be used in conjunction with instructions in this Chapter. **Exhibit 6-I** describes a typical acquisition process under the *Uniform Relocation Act*.

¹ However, if the owner requests an appraisal, the grantee must obtain an appraisal.

2. Send Preliminary Acquisition Notice. A *Preliminary Acquisition Notice* (**Exhibit 6-C**) must be delivered in person or sent by registered mail to the property owner. The notice is meant to inform the property owner of the grantee's intent to acquire the property, and of the owner's basic protections under the *Uniform Relocation Act*. The notice should include information about the activity for which the property will be used, indicating that the notice is not a notice to vacate the property, but describing the procedures by which the grantee will proceed with its attempt to acquire the property. In the notice, provide the name and telephone number of a local contact person who can answer questions and provide further information. A booklet entitled, ***When a Public Agency Acquires Your Property (or its equivalent)*** is available from MDOC and should be provided to the property owner.
3. Have Property Appraised to Determine Fair Market Value. Once the grantee has obtained preliminary title evidence, a boundary description, and a legal description of the property to be acquired, the property should be appraised. The term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The *Uniform Relocation Act* requires that the public agency compensate the owner at no less than the fair market value of the property. Although only one appraisal is required by law, past experience suggests that two appraisals are preferred in instances where the property is valued at greater than \$25,000. Regardless of the number of appraisals, **the property owner or his or her representative must be invited to accompany the appraiser during his/her inspection of the property.**

To determine the standards for a "qualified professional appraiser," the Montana HOME program recommends, at a minimum, professional affiliation with one of the eight national appraisal organizations (see list below), or a listing on the Montana Department of Highway's list of appraisers.

List of National Appraisal Organizations:

- American Society of Appraisers
- American Institute of Real Estate Appraisers
- American Society of Farm Managers and Rural Appraisers
- International Association of Assessing Officers
- International Right of Way Association
- National Association of Independent Fee Appraisers
- National Association of Master Appraisers
- National Society of Real Estate Appraisers

The appraiser must not have interest in the property and cannot be the person secured as the selling agent.

Under the *Uniform Relocation Act*, an appraisal is not required in the following situations:

- The landowner agrees to donate the property. However, the landowner(s) must first be informed of their rights under the *Uniform Relocation Act*, including the right to receive just compensation. They must also state in writing that they have been informed of these rights, that they agree to waive the appraisal requirement; and they have been informed that the grantee will not exercise its right of (or does not have the power of) *eminent domain* as a means of acquiring the property **Exhibit 6A- ii**, provides a model for waiver of procedures required under the *Uniform Relocation Act* when a property donation is involved.
- The determination of valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based upon a review of available data prepared by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the grantee's appropriate HOME Project file).
- The landowner agrees, in writing, to waive the appraisal.

Contracting for appraisal services is subject to federal requirements for procurement of professional services (see **Chapter 4**). **Exhibit 6-D**, *Agreement for Appraisal Services (Acquisition)* should be used when securing appraisal services for HOME Acquisitions.

4. Have Appraisal Reviewed. The *Uniform Relocation Act* requires that a qualified review appraiser examine all appraisals. The *HOME Project File* should include the review appraiser's certification and the recommended or approved value of the property in a signed written statement including an explanation of the basis for the recommendations. (See **Exhibit 6-E** for a sample *Appraisal Report Review Form*.) Contracting for review appraisal services is also subject to federal requirements for procurement of professional services (see **Chapter 4, PROCUREMENT**). The review appraisal can also be waived as long as the landowner(s) are informed of their rights and agree to the waiver in writing.
5. Determine Just Compensation for the Property. The grantee will establish what it considers to be a fair price for the property. **This amount shall not be less than the review appraiser's recommendation as to the fair market value of the property.**
6. Make a Written Offer to the Owner. As soon as possible following the determination of just compensation for the property, the grantee should submit a written offer to the property owner. The grantee is encouraged to deliver the written notice in person, although this is not required under the *Uniform Relocation Act*. A written

statement of the basis for the offer will be included with the notice to acquire. (See **Exhibit 6-F** for a sample *Written Offer to Purchase* that includes a Statement of the Basis for Determination of Just Compensation).

7. Review Any Additional Materials Related to Determination of the Purchase Price. Based on discussions with the owner(s) and any additional information that they have supplied, the grantee may determine that the original appraisal requires updating, or the grantee may request a new appraisal. If subsequent updating or a new appraisal justifies a higher rate of compensation, the grantee should immediately establish a new offer price and submit the new offer in writing as described in step 6 above (page 6 of this Chapter).
8. Administrative Settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized MDOC official approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification explaining the basis for the settlement must be included in the grantee's files.
9. Make Payment or Make a Final Offer Before Initiating Condemnation Procedures.
10. Make Payment. **In those cases where the grantee and the property owner arrive at a mutually agreed upon price, the grantee must make direct payment to the owner before requiring that possession of the property be surrendered.** In addition, the grantee must reimburse the owner for all reasonable expenses necessarily incurred including:
 - Recording fees, transfer taxes, documentary stamps and similar expenses incidental to conveying the real property to the grantee;
 - Penalty costs and other charges for prepayment of any preexisting mortgage; and
 - The pro rata portion of any prepaid real property taxes, allocable to the period after the grantee obtains title to the property.

The grantee is not required to pay costs required solely to perfect the owner's title.

The *Uniform Relocation Act* specifically prohibits the grantee from taking actions such as threatening to move up the condemnation date in order to coerce the property owner into agreeing to the agency's final offer.

C. FINAL OFFER BEFORE INITIATING CONDEMNATION PROCEDURES - ADMINISTRATIVE SETTLEMENT

The *Uniform Relocation Act* allows for an administrative settlement when reasonable efforts at negotiation have failed. A written justification must be prepared which indicates that available information supports such a settlement (e.g., appraisals, recent court awards,

estimated trial costs, and valuation problems). The grantee and MDOC must agree that such a settlement is reasonable, prudent, and in the public interest.

MDOC generally considers a figure that does not exceed 10 percent of the established just compensation as a reasonable alternative to condemnation. If the grantee's justification for an administrative settlement appears unreasonable, MDOC may determine the excess payment to be an ineligible cost under the HOME program. The purpose of this provision is to allow the grantee flexibility in the negotiation process, while discouraging windfall profits from the sale of properties for use in publicly assisted projects.

The final offer should be hand delivered or sent by registered mail. It must include: the final offer; an invitation to discuss again the basis of the final offer; and the anticipated date on which the grantee intends to begin condemnation procedures. The property owner should receive the notice at least seven days prior to the date provided for the commencement of condemnation proceedings (see **Exhibit 6-G** for a sample *Final Notice to Acquire by Negotiation*).

D. CONDEMNATION PROCEEDINGS

In the event that the property cannot be acquired by negotiations, condemnation proceedings can begin on the date provided in the *Final Notice to Acquire by Negotiations*. The *Uniform Relocation Act* requires that an amount not less than the grantee has in an approved appraisal of the fair market value of the property be deposited with the court for the benefit of the owner. Section 70-30-101, MCA describes state procedures for counties and municipalities when exercising the power of eminent domain. Any grantee involved in a condemnation proceeding is strongly encouraged to work closely with their attorney to assure compliance with relevant state and federal laws.

E. MAINTAIN ACQUISITION FILE FOR EACH PROPERTY

In addition to taking the above procedural steps, the grantee is responsible for maintaining files and documentation on each property acquired. To assist the grantee in complying, a *Uniform Relocation Act Governed Acquisition Checklist (Exhibit 6-H)* was developed to be included in each HOME Project File. By using it and maintaining a comprehensive file in chronological order, the grantee can better and more easily comply with *Uniform Relocation Act* documentation requirements, and complete the acquisition process in a manner that complies with requirements of the Act.

The HOME **Project** File should include at least the following items:

- Description of property and reasons for acquisition;
- Completed *Preliminary Acquisition Notice (Exhibit 6-C)*;
- Appraiser contracts [**Exhibit 6-D, Agreement for Appraisal Services (Acquisition)**];
- Invitation of owner to accompany appraisers;
- Copy of appraisals;

- Completed *Appraisal Report Review Form* (**Exhibit 6-E**);
- Copy of the *Written Offer to Purchase*, which includes a Statement of the Basis for Determination of Just Compensation (**Exhibit 6-F**);
- If applicable, completed *Final Notice to Acquire by Negotiations* (**Exhibit 6-G**);
- Completed *Uniform Relocation Act Governed Acquisition Checklist* (**Exhibit 6-H**);
- Records of any negotiations with owner;
- Copy of any materials supplied by the owner to determine just compensation;
- Copies of any written agreements to waive or modify benefits or compensation requirements under the *Uniform Relocation Act*;
- Copy of agreements for compensation of related improvements;
- Evidence of payment;
- Copy of deed and settlement costs;
- Justification of excess payment (if applicable); and
- Notice of initiation of condemnation (if applicable).

F. OTHER ACQUISITION CONSIDERATIONS

1. Special Note on Donations. As described earlier, donation of property can occur under either the voluntary acquisition process or under provisions of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (the *Uniform Relocation Act*). The Act allows for reduction of the costs of acquiring land without reducing the protection of affected persons, by permitting the full or partial donation of real property to an acquiring agency as long as the donor is informed of his or her right to just compensation. In addition, an owner of real property to be donated may waive the right to appraisal of the property, as long as he or she is informed that they are entitled to an appraisal. For donations falling under the *Uniform Relocation Act*, the HOME Project File should contain documentation that the owner was informed of his or her rights when agreeing to make the donation, and the file must include a copy of the deed for the donated property.
2. Decision Not To Acquire. If, at any time after the Preliminary Acquisition Notice (**Exhibit 6-C**) has been sent, a decision is made not to buy or condemn a property, the property owner and any tenants must be notified in writing. The notice should specify that any person moving from the property thereafter will not be eligible for relocation payments and assistance.
3. Uneconomic Remnant. If the grantee acquires only a portion of the owner's parcel and the remaining portion(s) would have little or no utility or economic value, the agency must offer to acquire the "uneconomic remnant" as part of the total acquisition offer.

4. Tenant-Owned Improvements. The grantee must offer just compensation for any improvements on the acquired property. Just compensation can be determined as the amount that the improvement adds to the total value of the real property, or the salvage value of the improvement, whichever is greater.
5. Owner Retention of Improvements. If the property owner chooses to remove any improvements that have been included in the fair market appraisal of the property, the grantee may subtract the salvage value of the removed improvements from the purchase offer. For example, if a property value includes a utility shed that the owner removes from the property upon public acquisition, the offer to the owner may be decreased to the appraised property value, less the salvage value of the shed.
6. Rental Payments. If the grantee agrees to allow the owner to remain on the property for a period of time following payment for acquisition, the owner can be charged rent for an amount up to the fair market rent for the period during which the owner remains on the property.

PART II - RELOCATION

I. OVERVIEW

The federal requirements for relocation of households or businesses are extensive and extremely complex. This chapter will cover several of the most important issues that each grantee must consider in managing a project involving HOME funds. While maintaining consistency with the other goals and objectives of the HOME Program, each grantee must assure that it has taken all reasonable steps to minimize displacement that may occur as a result of a project assisted with HOME funds. In addition to minimizing displacement, each grantee will ensure that residential tenants of dwellings targeted for rehabilitation are provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling within that building/complex upon completion of the project.

The main focus of this section is to provide a resource of information for avoiding unnecessary relocation costs. In *Part II Section II*, the different types of notices are examined and various grantee responsibilities are discussed. Since proper and timely tenant notification is the key to avoiding unnecessary costs, sample notification letters are provided in the *Exhibits* section at the end of the chapter.

HOME grantees should keep in mind that the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (URA), applies whether the HOME assistance is used for homebuyer assistance or for the acquisition and rehabilitation of property. If any grantee considers relocation as a potential factor in a HOME program activity, the MDOC HOME Program Officer should be contacted immediately for further guidance. **Exhibit 6-I** provides a flowchart summary of the acquisition process under the URA.

II. GRANTEE RESPONSIBILITIES

The grantee must insure that all reasonable steps are taken to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds.

A. **TYPES OF ASSISTANCE**

The grantee is required to provide various types of assistance to "displaced persons" and for temporary relocations. Relocation assistance is provided in situations involving temporary moves where the residential tenant is not required to permanently relocate as a result of the HOME project. For example, rehabilitation projects involving lead-based paint may require a family to move temporarily.

Relocation assistance is also provided for permanent moves. The persons receiving this assistance in permanent moves are called displaced persons. The types of assistance available include:

- Payments for actual and reasonable out-of-pocket moving and related expenses, for both permanent and temporary moves;
- Various types of replacement housing payments, for both tenants and homeowner occupants;
- Moving, reestablishment, and allowance payments for displaced businesses and nonprofit organizations; and
- Appropriate advisory services, including reasonable advance written notices and one-on-one assistance.

B. DISPLACED PERSON

In order to gain a sense of the extent of relocation and displacement costs, it is necessary to thoroughly understand the definition of the term "displaced person." All persons and families, individuals, businesses, nonprofit organizations and farms forced to move **permanently** as a direct result of rehabilitation, demolition, or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance. The definition of displacement as provided in 24 CFR §353(c)(2) is complex, but the following list describes various scenarios that could lead to displacement costs in a HOME-assisted project. For the purposes of the HOME Program, a displaced person includes but may not be limited to:

- A person who moves permanently from the real property after receiving a notice from the property owner who requires such a move (as a direct result of acquisition, rehabilitation or demolition for a project assisted with HOME funds), if the move occurs on or after:
 - The date of submission of an application to MDOC, if the applicant has site control and the project is later approved; or
 - The date MDOC approves the applicable site, if the applicant does not have site control at the time of the application; or

If the move occurs before the date described above, if either MDOC or HUD determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the assisted project;

- A tenant-occupant of a dwelling who moves permanently from the building/complex after execution of an agreement between the grantee and MDOC covering the rehabilitation, acquisition or demolition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project.

- A tenant occupant of a dwelling who is required to relocate temporarily for the project, but does not return to the building complex, if the conditions of 24 CFR §92.353(b) are not met.
- A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another unit in the building/complex, if the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move or other conditions of the move are not reasonable.

C. HOME REQUIREMENTS

If any portion of HOME funds is used to pay for any part of the costs of acquisition, demolition, construction or rehabilitation activities, the project is subject to all applicable Barney Frank Amendment Section 104(d) requirements. The Section 104(d) requirements may be triggered when displacement occurs as a result of demolition or conversion for a HOME funded project.

Under the Barney Frank Amendment, the intent of the law is fulfilled only if the grantee or recipient of the federal funds certifies that it is following a *residential antidisplacement and relocation assistance plan*. The plan must have two main components in order to satisfy the requirements of the law.

The first requirement calls for a one-for-one replacement unit requirement. All occupied and vacant but occupiable low-income dwelling units demolished or converted to a use other than as low-income dwelling units as a direct result of activities assisted under the HOME program must be replaced with low-income dwelling units. These replacement units must be in the same local jurisdiction, in standard condition, sufficient in number and size, and designed to remain low-income housing for at least 10 years from the date of initial occupancy.

HUD has determined housing that is converted to an emergency shelter, whether it serves homeless persons, battered spouses, or others, is a “conversion” of lower-income housing. Changing lower-income housing into nursing homes, halfway houses, group homes and transitional housing, or other forms of permanent or transitional housing, does not constitute a “conversion” and, thus, does not trigger a replacement requirement.

The plan's second major component identifies the relocation assistance provided to each low-income household displaced by the demolition of any low-income housing unit or by the conversion of a low-income dwelling to another use, occurring as a direct result of assisted activities. This relocation assistance can include actual and reasonable moving expenses, advisory services, reimbursement for reasonable and necessary security deposits and credit checks, and replacement housing assistance. The replacement housing assistance can be in the form of Section 8 vouchers or cash. The cash assistance is based on 30 percent of adjusted income, and covers up to a five-year period of affordability.

D. RELOCATION PLANNING

Due to the complexities and costs associated with relocation, it is essential for each grantee to design and follow a relocation plan that is responsive, timely and reasonable in providing assistance to displaced and temporarily relocated persons. **Exhibit 6-J, *Antidisplacement and Relocation Assistance Plan***, provides general guidelines and parameters for grantees to follow in designing a relocation plan. Adequate planning is an essential element in avoiding unnecessary relocation costs.

E. NOTICES

The publication and distribution of timely notices is the key to avoiding unnecessary relocation costs. If relocation is a factor in a HOME-assisted project, accurate and timely record keeping is essential.

Each tenant is entitled to timely notice(s) explaining the impact of the proposed project. Most important, a tenant who will be permanently displaced must be informed of his or her eligibility for relocation assistance and the nature of that assistance. A tenant who will not be permanently displaced must be informed of the terms and conditions under which the tenant may occupy the HOME property upon completion of the project. This information should be provided as soon as feasible, as unnecessary delay places an unacceptable burden on the tenant. While it is sometimes possible to convey all this information in one timely notice, most project circumstances dictate the issuance of several notices and possibly information booklets. These sources of information are discussed below.

1. General Information Notice. As soon as feasible, each occupant of the property shall be issued an appropriate advisory notice. The notices are directed to persons who may not be displaced as well as persons who will be displaced.

The notice to persons who will not be permanently displaced shall explain that the project has been proposed, and it should caution the person not to move. A suggested sample notice is provided as **Exhibit 6-L**.

For persons who may be displaced, the notice shall:

- Explain that a project has been proposed and caution the person not to move before the project is approved and they receive a notice of eligibility for relocation assistance;
- Generally describe the relocation payments for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining such payments;
- Inform the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate;

- Inform the person that he or she will not be required to move without at least 90 days advance written notice and inform any person to be displaced from a dwelling that he or she will not be required to vacate the property earlier than 90 days after at least one comparable replacement dwelling has been made available to them; and
- Describe the person's right to appeal the grantee's determination as to their eligibility for relocation assistance, the amount of such assistance, or their right to appeal the acceptability of the comparable replacement dwelling(s) to which they have been referred.

A suggested sample notice to persons who may be permanently displaced is provided as **Exhibit 6-M**.

2. Notice at Time of Initiation of Negotiations. For the purposes of providing the appropriate notice to a tenant or owner and determining whether a person displaced from a dwelling qualifies for a replacement housing payment, the term "initiation of negotiations" means:

- If the displacement results from private-owner rehabilitation, demolition, or acquisition, the execution of the agreement between the grantee and the person owning or controlling the real property;
- Whenever the real property is acquired by a state agency (but the acquisition does not qualify as an "arm's length" or voluntary transaction), the initiation of negotiations means the delivery of the initial written offer of just compensation by the state agency to the owner or the owner's representative, to purchase the real property for the project. However, if the state agency issues a notice of its intent to acquire the real property and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property;
- If the displacement results from state agency demolition or rehabilitation and there is no related state agency acquisition, the notice to the person that he or she will be displaced by the project (or the person's actual move, if there is not such notice).

Promptly after the initiation of negotiations or earlier, each person occupying property in the project shall be issued either a *Notice of Nondisplacement* (**Exhibit 6-N**) or *Notice of Eligibility for Relocation Assistance* (**Exhibit 6-O and Exhibit 6-P**).

The *Notice of Nondisplacement* shall explain the reasonable terms and conditions under which the person may lease and occupy the HOME property upon completion of the project. An example of this notice is provided as **Exhibit 6-N**. Failure to provide this notice to residential tenants in a timely manner may result in the tenant moving permanently, and then claiming relocation assistance as a displaced person.

The *Notice of Eligibility for Relocation Assistance* shall inform the person of his or her eligibility for the relocation assistance, effective as of the date of the initiation of negotiations; and describe the types of assistance available, the estimated amounts of such assistance, and procedures for obtaining the assistance. Sample notices of eligibility for relocation assistance for residential tenants and homeowners are provided as **Exhibit 6-O** and **Exhibit 6-P**, respectively.

3. Information Booklets. A grantee may meet most of the general information requirements to describe available relocation assistance by providing the person with a copy of the appropriate HUD information booklet. There are three booklets available:

- *Relocation Assistance to Tenants Displaced From Their Homes* (HUD-1042-CPD):
<http://www.hud.gov/offices/cpd/library/relocation/publications/1042.pdf>
- *Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms* (HUD-1043-CPD):
<http://www.hud.gov/offices/cpd/library/relocation/publications/1043.pdf>
- *Relocation Assistance to Displaced Homeowner Occupants* (HUD-1044-CPD):
<http://www.hud.gov/offices/cpd/library/relocation/publications/1044.pdf>

Copies of these information booklets are available on request from MDOC or on the web at the addresses shown above.

III. AFFECTED PERSONS

A. LIST OF OCCUPANTS

For each project, the grantee's files shall include a list identifying the name and address of:

- All persons occupying the real property at the beginning of the project. Generally, this is the date of the initial submission of the HOME application to MDOC. However, if site control is not obtained until after submission of the application, the date of site control is usually considered the beginning of the project;
- All persons moving into the property on or after the date on which the project begins, but before completion of the project; and
- All persons occupying the property upon completion of the project.

The lists may be maintained in a suitable computer generated format that also indicates, for project management purposes, progress made in completing the HOME project. Sample relocation reports are provided as **Exhibit 6-Q** and **Exhibit 6-R**.

B. TENANTS NOT DISPLACED

Documentation on tenants not permanently displaced shall include:

- Evidence that the tenant received timely written notice that he or she would not be displaced by the project.
- For a tenant-occupant of a dwelling, evidence that the tenant received:
 - ✓ A timely offer of an opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling in the building/complex upon completion of the project under reasonable terms and conditions; and
 - ✓ Reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or a move to another unit in the building/complex.
- For each tenant who is not involuntarily displaced but who elects to relocate permanently:
 - ✓ An indication of the reason for the move and any personal contact to explain available alternatives, and written notice to the tenant that he/she will not qualify for relocation payments as a displaced person. This information must be available for all tenants who occupied the property before project completion, but did not occupy the property after project completion and did not receive relocation assistance as a displaced person.
- Racial/ethnic/gender identification as required by section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.
- A copy of any appeal or complaint filed, and the grantee's response to the appeal or complaint.

C. DISPLACED PERSONS

For each person permanently displaced, the grantee must maintain a case file that includes:

- Identification of the person's name, address, racial/ethnic group classification and date of initial occupancy;
 - ✓ For residential tenant-occupants, include age, sex, and income of all members of the household, and monthly utility costs for the displacement dwelling;
 - ✓ For homeowners, include the grantee's acquisition cost of the unit;

- ✓ For nonresidential occupants, include the type of business enterprise (farm, nonprofit corp., etc.).
- Evidence that the person received early written notice of the possible displacement including a general description of relocation payments and advisory services for which the person may be eligible, basic eligibility conditions, and procedures for obtaining payments;
- Evidence that the person received timely written notice of eligibility for relocation assistance and, for those persons displaced from a dwelling, referrals to specific comparable replacement dwellings, and the method used to establish the amount of the replacement housing payment;
- Identification of the displaced person's relocation needs and preferences, dates of personal contacts, and services provided;
- Copy of the 90-day notice and vacate notice, if issued;
- Identification of referrals to replacement properties, date of referral, rent/utility costs or sale price (if a dwelling), date of availability, and reason(s) person declined referral;
- Identification (address) of actual replacement property, rent/utility costs or sale price (if a dwelling) and date of relocation;
- Copy of replacement dwelling inspection report showing condition of unit and date of inspection;
- Copy of each approved claim form and related documentation, evidence that the person received payment and, if applicable, Section 8 Certificate or Housing Voucher; and,
- Copy of any appeal or complaint filed and the grantee response.

D. ASSISTANCE DOCUMENTS

Exhibit 6-S contains a variety of HUD forms to be used to document payments to displaced tenants and homeowners and to document the comparable replacement dwellings suggested by the grantee. The completed applicable forms should be part of the displaced person's and project files.

E. UNIFORM RELOCATION ASSISTANCE DECISION FLOW CHART

Despite its complexity and expense, relocation may be an important and necessary element of a HOME-assisted project. **Exhibit 6-T** is included to provide a visual picture of the relocation process. The most important part of this process is the grantee's distribution

of the *General Information Notices* – failure to distribute the notices can result in thousands of dollars in unnecessary relocation costs.

CHAPTER 6 Parts I & II

EXHIBITS

PART I ACQUISITION

- 6-A Sample Voluntary Agreement (use by local government)
Sample Agreement for Donation of Real Property
Sample Voluntary Agreement (use by nonpublic entity)
Sample Establishment of Fair Market Value Without an Appraisal
- 6-B Sample Voluntary Acquisition File Checklist
- 6-C Preliminary Acquisition Notice
- 6-D Agreement for Appraisal Services (Acquisition)
- 6-E Sample Appraisal Report Review Form
- 6-F Written Offer to Purchase
- 6-G Final Notice to Acquire by Negotiation
- 6-H Uniform Relocation Act Acquisition Checklist

PART II RELOCATION

- 6-I Tenant Assistance/Relocation Process
- 6-J MDOC Antidisplacement and Relocation Assistance Plan
- 6-K RESERVED
- 6-L General Information Notice -- Residential Tenant That Will Not Be Displaced
- 6-M General Information Notice -- Residential Tenant to Be Displaced
- 6-N Notice of Nondisplacement to Residential Tenant
- 6-O Notice of Eligibility for Relocation Assistance -- Residential Tenant
- 6-P Notice of Eligibility for Relocation Assistance -- 180-Day Homeowner
- 6-Q Residential Relocation Management Report
- 6-R Nonresidential Relocation Management Report
- 6-S Form HUD-40054: Claim for Moving and Related Expenses (Families and Individuals)
Form HUD-40055: Claim for Actual Reasonable Moving and Related Expenses (Businesses, Nonprofit Organizations and Farm Operations)
Form HUD-40056: Claim for Fixed Payment in Lieu of Payment for Actual Moving and Related Expenses
Form HUD-40057: Claim for Replacement Housing Payment for 180-Day Homeowner
Form HUD-40058: Claim for Rental Assistance or Down Payment Assistance
Form HUD-40061: Comparable Replacement Dwelling for Computing a Replacement Housing Payment
- 6-T Relocation Decision Flowchart